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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§	
	§	
CONGRESS SAND & GRAVEL, LLC, <i>et al</i>¹.	§	Case No. 10-37522(SGJ)
	§	
DEBTORS.	§	Chapter 11
	§	(Jointly Administered)

MOTION TO ENTER INTO LEASE

NOW INTO COURT, through undersigned counsel, come Congress Sand & Gravel, LLC (“Congress Sand” or “Lessee”) and Congress Materials, LLC as debtors and debtors-in-possession (the “Debtors”), who respectfully move this Court for entry of an order authorizing Congress Sand to enter into a lease between Congress Sand as lessee, and Phillip Bow and R Three Ranch (“Lessor”) as lessor, for certain land located in Henderson County, Texas as well as the scalehouse, scales, drive-over hopper, and barns located on such premises (the “Lease”), and in support thereof, respectfully represent:

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (O).

¹ The Debtors include Congress Sand & Gravel, LLC and Congress Materials, LLC (Case No. 10-37526).

2. The statutory bases for the relief requested herein are sections 105(a) and 363 of title 11 of the United States Code (as amended, the “Bankruptcy Code”).

Background

3. On October 28, 2010 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. No creditors’ committee has been appointed in these cases by the United States Trustee. The Debtors are continuing in possession of their property and are operating their businesses in the ordinary course as debtors-in-possession. An Order for Joint Administration of Cases was entered on November 3, 2010 [P-48].

4. The Debtors have filed a joint amended Chapter 11 plan [P-275] and disclosure statement [P-276], and such disclosure statement was approved by order of this Court on May 24, 2011 [P-291]. The confirmation hearing on the Debtors’ joint plan is scheduled for June 29, 2011 at 9:30 a.m.

5. The Debtors are primarily engaged in the processing of construction aggregates used over a wide range of applications, including road construction, commercial construction, and ready mix concrete. The Debtors’ principal customers are road paving companies, oil and gas companies, utility contractors, and concrete product companies.

6. In order to meet the needs of its customers, Congress Sand has entered into the Lease with Lessor. Entered into as of May 1, 2011 for a term of five (5) years, the Lease provides that Lessor “leases, lets and demises” unto Lessee the premises defined in the Lease for the purpose of mining, producing, removing, and transporting all of the “Suitable Sand and Gravel” as that term is defined in the Lease, as well as flume sand, select fill, top soil, and cushion sand from the premises.

Relief Requested

7. By this Motion, the Debtors seek an order from this Court granting to Congress

Sand the authority to enter into the Lease attached hereto as **Exhibit “A”**.

Basis for Relief

8. Section 363 of the Bankruptcy Code provides that transactions not in the ordinary course of business must be approved by court order. The Debtors contend that this Lease is entered into in the ordinary course, but is seeking the approval of this Court out of an abundance of caution. Courts routinely have held that transactions should be approved under Section 363 of the Bankruptcy Code when they are supported by the business judgment of management. *See, e.g., In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983) (outlining requirements for the sale of assets under Section 363(b)); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999).

9. Additionally, section 105(a) of the Bankruptcy Code provides in pertinent part, that this Court “may issue any order, process, or other judgment that is necessary or appropriate to carry out the provisions of this title....” 11 U.S.C. §105(a).

10. The Debtors have determined that it is in the best interests of the Debtors, their creditors, and their estates to enter into the Lease. The Lease enables Congress Sand to obtain a competitive advantage because the Lease location is in close proximity to the Dallas area. In addition, because the leased premises are closer to Dallas, Congress Sand will benefit from reduced fuel costs as a result of being closer to its customers. Under these circumstances, entering into the Lease represents sound business judgment, and therefore should be approved by the Court.

WHEREFORE, the Debtors request that this Court enter an order authorizing Congress Sand & Gravel, LLC to enter into the Lease, and granting such other relief as is just and equitable.

Dated: June 28, 2011

Respectfully submitted,

/s/Douglas S. Draper

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Counsel for Congress Sand & Gravel, LLC and
Congress Materials, LLC

NOTICE ANNEX

Pursuant to 11 U.S.C. § 342, the following sets forth the name, addresses and last four digits of the tax identification number for each of the referenced Debtors:

<u>DEBTORS AND ADDRESSES</u>	<u>CASE NO.</u>	<u>TAX I.D. NO.</u>
Congress Sand & Gravel, LLC 14099 Ne Country Road 3180 Kerens, TX 75144	10-37522	xx-xxx2409
Congress Materials, LLC 1401 Cates Street Suite 201 Bridgeport, TX 76426	10-37526	xx-xxx5603